

§ 36C-1-113. Construction of certain formula clauses applicable to estates of decedents dying in calendar year 2010.

(a) Purpose. – The federal estate tax and generation-skipping transfer tax expired January 1, 2010, for one year. To carry out the intent of decedents in the construction of wills and trusts and to promote judicial economy in the administration of trusts and estates, this section construes certain formula clauses that reference federal estate and generation-skipping transfer tax laws and that are used in trust instruments or amendments to trust instruments created by settlors who die in or before calendar year 2010.

(b) Applicability. – This section applies to the following:

- (1) To a trust instrument or an amendment to a trust instrument executed by a settlor before December 31, 2009, that contains a formula provision described in subsection (c) of this section if the settlor dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.
- (2) To the terms of a trust instrument or an amendment to a trust instrument executed by a settlor who dies before December 31, 2009, providing for a disposition of property that contains a formula provision described in subsection (c) of this section and occurs as a result of the death of another individual who dies after December 31, 2009, and before the earlier of January 1, 2011, and the effective date of the reinstatement of the federal estate tax and generation-skipping transfer tax, unless the terms of the instrument or amendment clearly manifests an intent that a rule contrary to the rule of construction described in subsection (c) of this section applies.

(c) Construction. – A trust instrument or an amendment to a trust instrument subject to this section is considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the trust instrument or the amendment to the trust instrument contains a formula that meets one or more of the following conditions:

- (1) The formula refers to any of the following: "applicable credit amount," "applicable exclusion amount," "applicable exemption amount," "applicable fraction," "estate tax exemption," "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "marital deduction," "maximum marital deduction," "unified credit," or "unlimited marital deduction."
- (2) The formula measures a share of a trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes.
- (3) The formula is otherwise based on a provision of federal estate tax or federal generation-skipping transfer tax law similar to the provisions in subdivision (1) or (2) of this subsection.

(d) Judicial Determination. – The trustee of the trust or an affected beneficiary under the trust may commence a proceeding to determine whether the settlor intended that the references under subsection (c) of this section be construed with respect to the federal law as it existed after December 31, 2009. The proceeding must be commenced within 12 months following the death of the settlor. (2010-126, s. 2.)